

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SILVERLIT TOYS MANUFACTORY, LTD., a
Hong Kong company; and SPIN MASTER
LTD., a Canadian corporation,

Plaintiffs,

v.

ABSOLUTE TOY MARKETING, INC., a Utah
corporation, dba HOBBYTRON.COM; TIM
GIBSON; and JIM ROYER,

Defendants.

No. C 06-7966 CW

TEMPORARY PROTECTIVE
ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. This Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. As set forth in Section 10, below, that

1 this Stipulated Protective Order creates no entitlement to file
2 confidential information under seal; Civil Local Rule 79-5 sets
3 forth the procedures that must be followed and reflects the
4 standards that will be applied when a party seeks permission from
5 the court to file material under seal.

6 2. DEFINITIONS

7 2.1 Party: any party to this action, including all of its
8 officers, directors, employees, consultants, retained experts, and
9 outside counsel (and their support staff).

10 2.2 Disclosure or Discovery Material: all items or
11 information, regardless of the medium or manner generated, stored,
12 or maintained (including, among other things, testimony,
13 transcripts, or tangible things) that are produced or generated in
14 disclosures or responses to discovery in this matter.

15 2.3 "Confidential" Information or Items: information
16 (regardless of how generated, stored or maintained) or tangible
17 things that qualify for protection under standards developed under
18 F.R.Civ.P. 26(c).

19 2.4 "Highly Confidential - Attorneys' Eyes Only"
20 Information or Items: extremely sensitive "Confidential Information
21 or Items" whose disclosure to another Party or nonparty would
22 create a substantial risk of serious injury that could not be
23 avoided by less restrictive means.

24 2.5. Receiving Party: a Party that receives Disclosure
25 or Discovery Material from a Producing Party.

26 2.6. Producing Party: a Party or non-party that produces
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1 Disclosure or Discovery Material in this action.

2 2.7. Designating Party: a Party or non-party that
3 designates information or items that it produces in disclosures or
4 in responses to discovery as "Confidential" or "Highly Confidential
5 – Attorneys' Eyes Only."

6 2.8 Protected Material: any Disclosure or Discovery
7 Material that is designated as "Confidential" or as "Highly
8 Confidential – Attorneys' Eyes Only."

9 2.9. Outside Counsel: attorneys who are not employees of
10 a Party but who are retained to represent or advise a Party in this
11 action.

12 2.10 House Counsel: attorneys who are employees of a
13 Party.

14 2.11 Counsel (without qualifier): Outside Counsel and
15 House Counsel (as well as their support staffs).

16 2.12 Expert: a person with specialized knowledge or
17 experience in a matter pertinent to the litigation who has been
18 retained by a Party or its counsel to serve as an expert witness or
19 as a consultant in this action and who is not a past or a current
20 employee of a Party or of a competitor of a Party's and who, at the
21 time of retention, is not anticipated to become an employee of a
22 Party or a competitor of a Party's. This definition includes a
23 professional jury or trial consultant retained in connection with
24 this litigation.

25 2.13 Professional Vendors: persons or entities that
26 provide litigation support services (e.g., photocopying;
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1 videotaping; translating; preparing exhibits or
2 demonstrations; organizing, storing, retrieving data in any
3 form or medium; etc.) and their employees and subcontractors.
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5 3. SCOPE

6 The protections conferred by this Stipulation and Order cover
7 not only Protected Material (as defined above), but also any
8 information copied or extracted therefrom, as well as all copies,
9 excerpts, summaries, or compilations thereof, plus testimony,
10 conversations, or presentations by parties or counsel to or in
11 court or in other settings that might reveal Protected Material.
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13 4. DURATION

14 Even after the termination of this litigation, the
15 confidentiality obligations imposed by this Order shall remain in
16 effect until a Designating Party agrees otherwise in writing or a
17 court order otherwise directs.
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19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating
21 Material for Protection. Each Party or non-party that designates
22 information or items for protection under this Order must take care
23 to limit any such designation to specific material that qualifies
24 under the appropriate standards. A Designating Party must take
25 care to designate for protection only those parts of material,
26 documents, items, or oral or written communications that qualify -
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1 so that other portions of the material, documents, items, or
2 communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this Order.

4 Mass, indiscriminate, or routinized designations are
5 prohibited. Designations that are shown to be clearly unjustified,
6 or that have been made for an improper purpose (e.g., to
7 unnecessarily encumber or retard the case development process, or
8 to impose unnecessary expenses and burdens on other parties),
9 expose the Designating Party to sanctions.

10 If it comes to a Party's or a non-party's attention
11 that information or items that it designated for protection do
12 not qualify for protection at all, or do not qualify for the
13 level of protection initially asserted, that Party or non-party
14 must promptly notify all other parties that it is withdrawing the
15 mistaken designation.

16 5.2 Manner and Timing of Designations. Except as
17 otherwise provided in this Order (see, e.g., second paragraph of
18 section 5.2(a), below), or as otherwise stipulated or ordered,
19 material that qualifies for protection under this Order must be
20 clearly so designated before the material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (apart from
23 transcripts of depositions or other pretrial or trial proceedings),
24 that the Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY
25 CONFIDENTIAL - ATTORNEYS' EYES ONLY" at the top of each page that
26 contains protected material. If only a portion or portions of the
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1 material on a page qualifies for protection, the Producing Party
2 also must clearly identify the protected portion(s) (e.g., by
3 making appropriate markings in the margins) and must specify, for
4 each portion, the level of protection being asserted (either
5 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY").

6 A Party or non-party that makes original documents
7 or materials available for inspection need not designate them for
8 protection until after the inspecting Party has indicated which
9 material it would like copied and produced. During the inspection
10 and before the designation, all of the material made available for
11 inspection shall be deemed "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
12 ONLY." After the inspecting Party has identified the documents it
13 wants copied and produced, the Producing Party must determine which
14 documents, or portions thereof, qualify for protection under this
15 Order, then, before producing the specified documents, the
16 Producing Party must affix the appropriate legend ("CONFIDENTIAL"
17 or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY") at the top of each
18 page that contains Protected Material. If only a portion or
19 portions of the material on a page qualifies for protection, the
20 Producing Party also must clearly identify the protected portion(s)
21 (e.g., by making appropriate markings in the margins) and must
22 specify, for each portion, the level of protection being asserted
23 (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
24 ONLY").

25 (b) for testimony given in deposition or in other
26 pretrial or trial proceedings, that the Party or non-party offering
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1 or sponsoring the testimony identify on the record, before the
2 close of the deposition, hearing, or other proceeding, all
3 protected testimony, and further specify any portions of the
4 testimony that qualify as "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
5 ONLY." When it is impractical to identify separately each portion
6 of testimony that is entitled to protection, and when it appears
7 that substantial portions of the testimony may qualify for
8 protection, the Party or non-party that sponsors, offers, or gives
9 the testimony may invoke on the record (before the deposition or
10 proceeding is concluded) a right to have up to 20 days to identify
11 the specific portions of the testimony as to which protection is
12 sought and to specify the level of protection being asserted
13 ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY").
14 Only those portions of the testimony that are appropriately
15 designated for protection within the 20 days shall be covered by
16 the provisions of this Stipulated Protective Order.
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18 Transcript pages containing Protected Material must
19 be separately bound by the court reporter, who must affix to the
20 top of each such page the legend "CONFIDENTIAL" or "HIGHLY
21 CONFIDENTIAL - ATTORNEYS' EYES ONLY," as instructed by the Party or
22 nonparty offering or sponsoring the witness or presenting the
23 testimony.
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25 (c) for information produced in some form other than
26 documentary, and for any other tangible items, that the Producing
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1 Party affix in a prominent place on the exterior of the container
2 or containers in which the information or item is stored the legend
3 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY." If
4 only portions of the information or item warrant protection, the
5 Producing Party, to the extent practicable, shall identify the
6 protected portions, specifying whether they qualify as
7 "Confidential" or as "Highly Confidential - Attorneys' Eyes Only."
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9 5.3 Inadvertent Failures to Designate. If timely
10 corrected, an inadvertent failure to designate qualified
11 information or items as "Confidential" or "Highly Confidential -
12 Attorneys' Eyes Only" does not, standing alone, waive the
13 Designating Party's right to secure protection under this Order
14 for such material. If material is appropriately designated as
15 "Confidential" or "Highly Confidential - Attorneys' Eyes Only"
16 after the material was initially produced, the Receiving Party, on
17 timely notification of the designation, must make reasonable
18 efforts to assure that the material is treated in accordance with
19 the provisions of this Order.
20

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Unless a prompt challenge to a
23 Designating Party's confidentiality designation is necessary to
24 avoid foreseeable substantial unfairness, unnecessary economic
25 burdens, or a later significant disruption or delay of the
26 litigation, a Party does not waive its right to challenge a
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1 confidentiality designation by electing not to mount a challenge
2 promptly after the original designation is disclosed.

3 6.2 Meet and Confer. A Party that elects to initiate a
4 challenge to a Designating Party's confidentiality designation must
5 do so in good faith and must begin the process by conferring
6 directly (in voice to voice dialogue; other forms of communication
7 are not sufficient) with counsel for the Designating Party. In
8 conferring, the challenging Party must explain the basis for its
9 belief that the confidentiality designation was not proper and must
10 give the Designating Party an opportunity to review the designated
11 material, to reconsider the circumstances, and, if no change in
12 designation is offered, to explain the basis for the chosen
13 designation. A challenging Party may proceed to the next stage of
14 the challenge process only if it has engaged in this meet and
15 confer process first.

16
17 6.3 Judicial Intervention. A Party that elects to press a
18 challenge to a confidentiality designation after considering the
19 justification offered by the Designating Party may file and serve a
20 motion under Civil Local Rule 7 (and in compliance with Civil Local
21 Rule 79-5, if applicable) that identifies the challenged material
22 and sets forth in detail the basis for the challenge. Each such
23 motion must be accompanied by a competent declaration that affirms
24 that the movant has complied with the meet and confer requirements
25 imposed in the preceding paragraph and that sets forth with
26 specificity the justification for the confidentiality designation
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1 that was given by the Designating Party in the meet and confer
2 dialogue.

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4 The burden of persuasion in any such challenge proceeding
5 shall be on the Designating Party. Until the court rules on the
6 challenge, all parties shall continue to afford the material in
7 question the level of protection to which it is entitled under the
8 Producing Party's designation.

9
10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

11 7.1 Basic Principles. A Receiving Party may use
12 Protected Material that is disclosed or produced by another Party
13 or by a non-party in connection with this case only for
14 prosecuting, defending, or attempting to settle this litigation.
15 Such Protected Material may be disclosed only to the categories
16 of persons and under the conditions described in this Order.
17 When the litigation has been terminated, a Receiving Party must
18 comply with the provisions of section 11, below (FINAL
19 DISPOSITION).

20 Protected Material must be stored and maintained by a
21 Receiving Party at a location and in a secure manner that ensures
22 that access is limited to the persons authorized under this Order.

23
24 7.2 Disclosure of "CONFIDENTIAL" Information or Items.
25 Unless otherwise ordered by the court or permitted in writing by
26 the Designating Party, a Receiving Party may disclose any
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1 information or item designated CONFIDENTIAL only to:

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3 (a) the Receiving Party's Outside Counsel of record in
4 this action, as well as employees of said Counsel to whom it is
5 reasonably necessary to disclose the information for this
6 litigation and who have signed the "Agreement to Be Bound by
7 Protective Order" that is attached hereto as Exhibit A;

8
9 (b) the officers, directors, and employees (including
10 House Counsel) of the Receiving Party to whom disclosure is
11 reasonably necessary for this litigation and who have signed
12 the "Agreement to Be Bound by Protective Order" (Exhibit A);

13 (c) experts (as defined in this Order) of the Receiving
14 Party to whom disclosure is reasonably necessary for this
15 litigation and who have signed the "Agreement to Be Bound by
16 Protective Order" (Exhibit A);

17 (d) the Court and its personnel;

18 (e) court reporters, their staffs, and professional
19 vendors to whom disclosure is reasonably necessary for this
20 litigation and who have signed the "Agreement to Be Bound by
21 Protective Order" (Exhibit A);

22 (f) during their depositions, witnesses in the action to
23 whom disclosure is reasonably necessary and who have signed the
24 "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of
25 transcribed deposition testimony or exhibits to depositions that
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1 reveal Protected Material must be separately bound by the court
2 reporter and may not be disclosed to anyone except as permitted
3 under this Stipulated Protective Order.

4 (g) the author of the document or the original source of
5 the information.

6
7 7.3 Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS'
8 EYES ONLY" Information or Items. Unless otherwise ordered by the
9 court or permitted in writing by the Designating Party, a
10 Receiving Party may disclose any information or item designated
11 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" only to:

12 (a) the Receiving Party's Outside Counsel of record in
13 this action, as well as employees of said Counsel to whom it is
14 reasonably necessary to disclose the information for this
15 litigation and who have signed the "Agreement to Be Bound by
16 Protective Order" that is attached hereto as Exhibit A;

17 (b) House Counsel of a Receiving Party (1) who has no
18 involvement in competitive decision-making or in patent
19 prosecutions, (2) to whom disclosure is reasonably necessary for
20 this litigation, and (3) who has signed the "Agreement to Be Bound
21 by Protective Order" (Exhibit A);

22 (c) Experts (as defined in this Order) (1) to whom
23 disclosure is reasonably necessary for this litigation, (2) who
24 have signed the "Agreement to Be Bound by Protective Order"
25 (Exhibit A), and (3) as to whom the procedures set forth in
26 paragraph 7.4, below, have been followed;

27 (d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(f) the author of the document or the original source of the information.

7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information or Items to "Experts"

(a) Unless otherwise ordered by the court or agreed in writing by the Designating Party, a Party that seeks to disclose to an "Expert" (as defined in this Order) any information or item that has been designated "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" first must make a written request to the Designating Party that (1) identifies the specific HIGHLY CONFIDENTIAL information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert's current resume, (4) identifies the Expert's current employer(s), (5) identifies each person or entity from whom the Expert has received compensation for work in his or her areas of expertise or to whom the expert has provided professional services at any time during the preceding five years, and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has provided any

1 professional services during the preceding five years.

2 (b) A Party that makes a request and provides the
3 information specified in the preceding paragraph may disclose the
4 subject Protected Material to the identified Expert unless, within
5 seven court days of delivering the request, the Party receives a
6 written objection from the Designating Party. Any such objection
7 must set forth in detail the grounds on which it is based.
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9 (c) A Party that receives a timely written objection must
10 meet and confer with the Designating Party (through direct voice to
11 voice dialogue) to try to resolve the matter by agreement. If no
12 agreement is reached, the Party seeking to make the disclosure to
13 the Expert may file a motion as provided in Civil Local Rule 7 (and
14 in compliance with Civil Local Rule 79-5, if applicable) seeking
15 permission from the court to do so. Any such motion must describe
16 the circumstances with specificity, set forth in detail the reasons
17 for which the disclosure to the Expert is reasonably necessary,
18 assess the risk of harm that the disclosure would entail and
19 suggest any additional means that might be used to reduce that
20 risk. In addition, any such motion must be accompanied by a
21 competent declaration in which the movant describes the parties'
22 efforts to resolve the matter by agreement (i.e., the extent and
23 the content of the meet and confer discussions) and sets forth the
24 reasons advanced by the Designating Party for its refusal to
25 approve the disclosure.
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1 In any such proceeding the Party opposing disclosure to
2 the Expert shall bear the burden of proving that the risk of harm
3 that the disclosure would entail (under the safeguards proposed)
4 outweighs the Receiving Party's need to disclose the Protected
5 Material to its Expert.
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7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
8 OTHER LITIGATION.

9 If a Receiving Party is served with a subpoena or an
10 order issued in other litigation that would compel disclosure of
11 any information or items designated in this action as
12 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," the
13 Receiving Party must so notify the Designating Party, in writing
14 (by fax, if possible) immediately and in no event more than three
15 court days after receiving the subpoena or order. Such
16 notification must include a copy of the subpoena or court order.

17 The Receiving Party also must immediately inform in
18 writing the Party who caused the subpoena or order to issue in the
19 other litigation that some or all the material covered by the
20 subpoena or order is the subject of this Protective Order. In
21 addition, the Receiving Party must deliver a copy of this
22 Stipulated Protective Order promptly to the Party in the other
23 action that caused the subpoena or order to issue.

24 The purpose of imposing these duties is to alert the
25 interested parties to the existence of this Protective Order and
26 to afford the Designating Party in this case an opportunity to try
27 to protect its confidentiality interests in the court from which
28

1 the subpoena or order issued. The Designating Party shall bear
2 the burdens and the expenses of seeking protection in that court
3 of its confidential material - and nothing in these provisions
4 should be construed as authorizing or encouraging a Receiving
5 Party in this action to disobey a lawful directive from another
6 court.

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8 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a Receiving Party learns that, by inadvertence or
10 otherwise, it has disclosed Protected Material to any person or in
11 any circumstance not authorized under this Stipulated Protective
12 Order, the Receiving Party must immediately (a) notify in writing
13 the Designating Party of the unauthorized disclosures, (b) use its
14 best efforts to retrieve all copies of the Protected Material, (c)
15 inform the person or persons to whom unauthorized disclosures were
16 made of all the terms of this Order, and (d) request such person or
17 persons to execute the "Acknowledgment and Agreement to Be Bound"
18 that is attached hereto as Exhibit A.

19
20 10. FILING PROTECTED MATERIAL.

21 Without written permission from the Designating Party or
22 a court order secured after appropriate notice to all interested
23 persons, a Party may not file in the public record in this action
24 any Protected Material. A Party that seeks to file under seal any
25 Protected Material must comply with Civil Local Rule 79-5.
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11. FINAL DISPOSITION.

Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after the final termination of this action, each Receiving Party must return all Protected Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material. With permission in writing from the Designating Party, the Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

IT IS SO ORDERED.

2/5/07

DATED: _____



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the United States District Court for the
Northern District of California on [date] in the case of _____ **insert formal name of the**
case and the number and initials assigned to it by the court. I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item that is subject to
this Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern
District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even
if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number]
as my California agent for service of process in connection with this action or any proceedings
related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____